
In the United States
Circuit Court of Appeals
For the Ninth Circuit. 12

In the Matter of

POMOC OIL COMPANY,

Debtor.

J. A. SASSO,

Appellant,

vs.

HERBERT C. GOLDMAN, as Trustee in Bankruptcy of
Pomoc Oil Company, a corporation, Debtor,

Appellee.

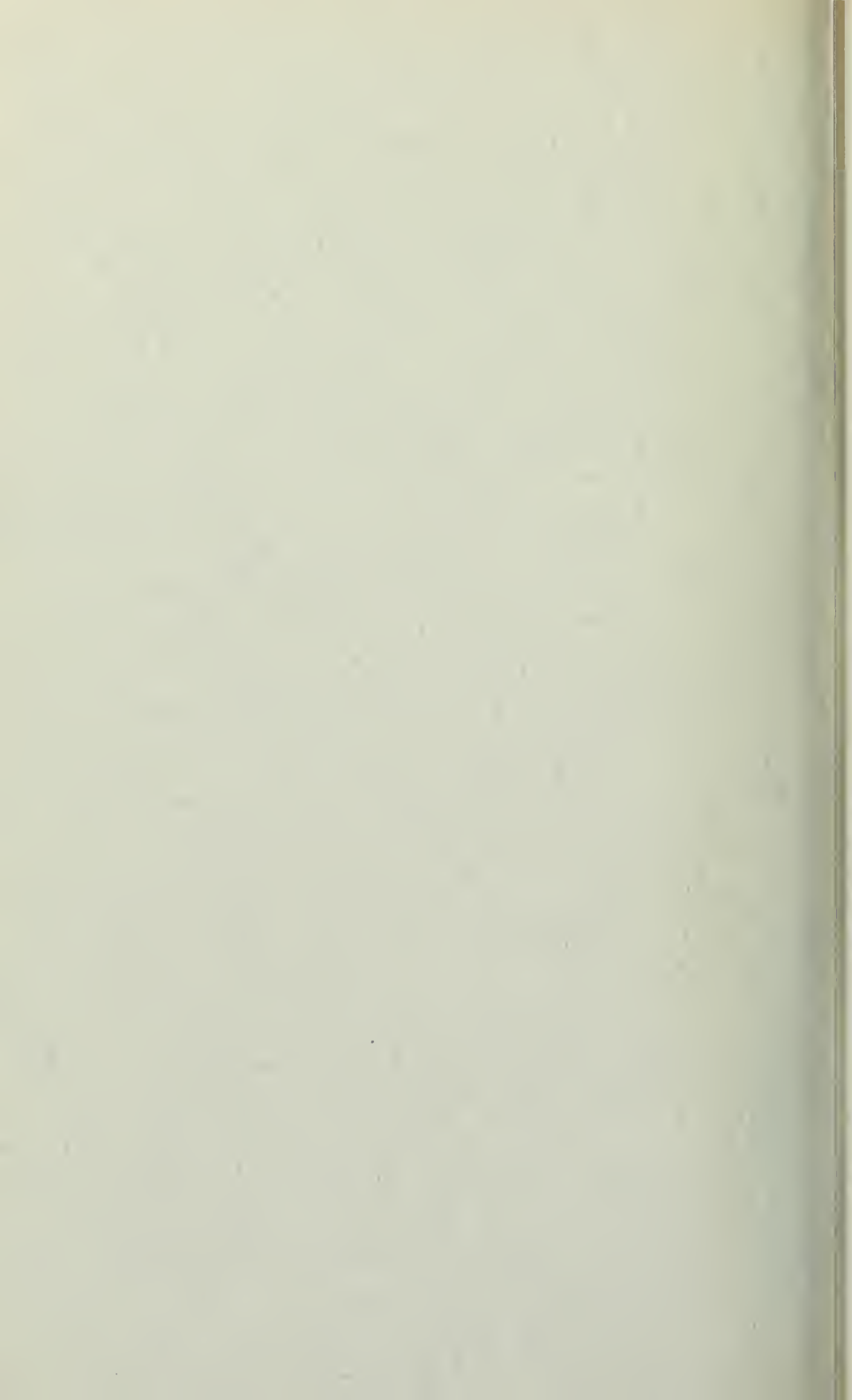
Transcript of Record

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

FILED

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PAUL P. O'BRIEN,
CLERK



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Circuit Court of Appeals
For the Ninth Circuit.

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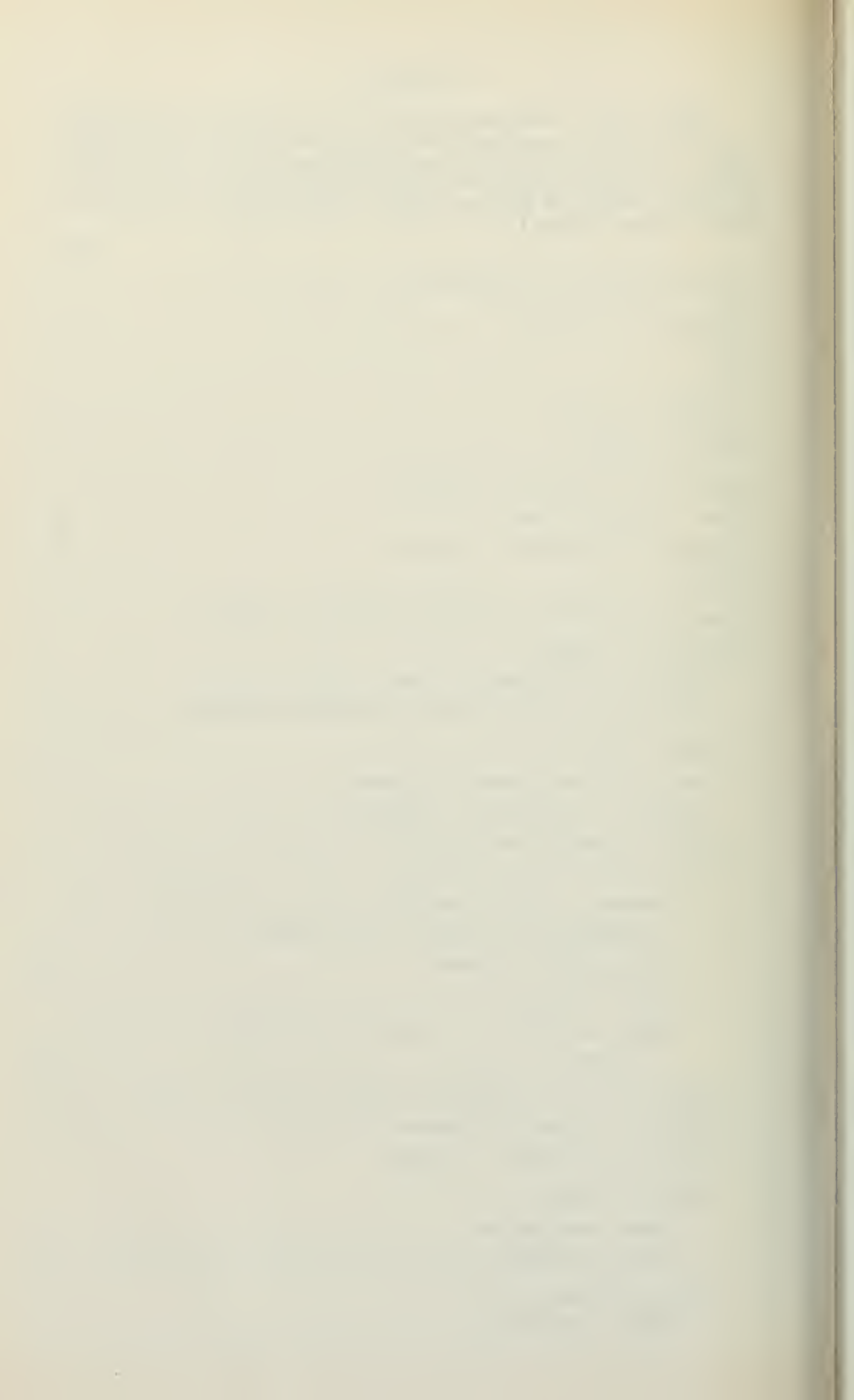
Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.



INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	PAGE
Appeal, Petition for Allowance of.....	29
Assignment of Errors.....	30
Bond	33
Citation	2
Certificate of Clerk.....	37
Clerk's Certificate	37
Names and Addresses of Solicitors.....	1
Order Allowing Appeal.....	32
Petition for Allowance of Appeal.....	29
Praecipe	35
Praecipe for Number of Copies of Record on Appeal.....	36
Statement on Appeal.....	3
Objection to Allowance of Claim of John A. Sasso.....	14
Order of May 14, 1938, Denying Petition for Review.....	26
Petition for Review.....	16
Proof of Debt and Letter of Attorney.....	10
Exhibit A—Abstract of Judgment.....	13
Referee's Certificate on Petition for Review on the Objections to the Claim of John A. Sasso.....	20
Summary of the Proceedings and of the Evidence and Conclusions and Order of the Referee.....	21
The Question Presented.....	22
Papers Submitted	23
Letter dated Aug. 5, 1936, George Marcell to Dr. John A. Sasso	24
Referee's Order on Objection to Claim of John A. Sasso.....	18
Stipulation Approving Statement on Appeal.....	27
Testimony on Behalf of Trustee:	
Marcell, George—	
Direct examination	6
Cross-examination	9
Sasso, Dr. John A.—	
Direct examination	4



Names and Addresses of Solicitors.

For Appellant:

EARL E. MOSS, Esq.,

417 South Hill Street,

Los Angeles, California.

For Appellee:

GEORGE T. GOGGIN, Esq.,

417 South Hill Street,

Los Angeles, California.

UNITED STATES OF AMERICA, ss.

To Herbert C. Goldman, as Trustee in Bankruptcy of
Pomoc Oil Company, a corporation, Debtor, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 14th day of July, A. D. 1938, pursuant to an order allowing appeal filed on June 14, 1938 in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain case entitled In The Matter of Pomoc Oil Company, a Debtor, involving the order on petition for review duly made and entered in this case on May 16, 1938, and you are directed to show cause, if any there be, why the order in the said matter mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Geo. Cosgrave United States District Judge for the Southern District of California, this 14th day of June, A. D. 1938, and of the Independence of the United States, the one hundred and sixty second.

Geo. Cosgrave

U. S. District Judge for the Southern District of California.

Service of a copy of the foregoing Citation, together with a copy of the petition for appeal, order allowing appeal, and assignment of errors, acknowledged this 14th day of June, 1938.

George T. Goggin

Attorney for appellee.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 56 min. past 4 o'clock Jun. 14, 1938 P. M. By M. J. Sommer Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF
CALIFORNIA CENTRAL
DIVISION

In the Matter of)	
)	
POMOC OIL COMPANY,)	
)	
Debtor.)	
<hr style="width: 20%; margin: 10px auto;"/>		
J. A. SASSO,	)	STATEMENT ON
Appellant,	)	APPEAL
v.)	
)	
HERBERT C. GOLDMAN, as	)	No. 29545-C
Trustee in Bankruptcy of Pomoc)	
Oil Company, a corporation,)	
Debtor,)	
)	
	Appellee.)	

On August 9, 1937, appellant, J. A. Sasso, filed a claim with Honorable Benno M. Brink, Referee in Bankruptcy to whom the above entitled matter was referred, after the entry of an order of liquidation; that on or about the 8th day of December, 1937, Herbert C. Goldman, as trustee of the estate of said debtor, filed an objection to said claim; that the same was duly heard by the said Referee and an order made on February 2, 1938, subordinating the claim of said J. A. Sasso to the claim of other general creditors of the estate of said debtor; that on February 8, 1938, a petition for review was filed; that on April 1, 1938, the said Referee in Bankruptcy filed a certificate on review. The petition for review came on for

(Testimony of John A. Sasso)

hearing on the 2nd day of May, 1938, before Honorable George Cosgrave, United States District Judge. The matter was argued and submitted on said date and on May 14, 1938, said Judge made an order denying the petition for review and confirming the findings and order of the Referee, from which order an appeal was taken.

DR. JOHN A. SASSO,

a witness called on behalf of the trustee, testified on

DIRECT EXAMINATION

as follows:

I am a surgeon by profession. I had several business transactions with George Marcell. I had one with respect to drilling an oil well up in Kern County. By reason of that transaction I obtained a judgment against George Marcell and the Pomoc Oil Company. I received a letter from George Marcell, and after that I gave him a check for \$1500.00, with which he opened an account of the Pomoc Oil Company. I hand you a check dated August 7, 1936, payable to George Marcell, signed by John A. Sasso and endorsed "Pomoc Oil Company by George Marcell, Pomoc Oil Company by R. J. Sullivan, Secretary-Treasurer". I have more checks. I hand you a check dated August 11, 1936, payable to George Marcell, \$1000.00, signed John A. Sasso, M. D. and endorsed "George Marcell. Pay to the order of Security Trust & Savings Bank, Pomoc Oil Company, George Marcell, President". I also hand you a third check dated August 17, 1936, payable to George Marcell in the sum of \$300.00, endorsed by George Marcell, "Pay to the order of Security Trust & Savings Bank, Pomoc Oil Company,

(Testimony of John A. Sasso)

George Marcell, President", and a fourth check dated August 19, 1936, payable to George Marcell for \$200.00, endorsed "George Marcell. Pay to the order of Security-First National Bank of Los Angeles, Pomoc Oil Company by R. J. Sullivan, Secretary-Treasurer", making a total of \$3000.00. At the time I gave Mr. Marcell those checks the Pomoc Oil Company issued notes to me. I gave that note into court. I am certain that note was signed by Pomoc Oil Company. It wasn't signed only by George Marcell. I have a personal note of George Marcell and Anna Marcell. This particular note was given by the Pomoc Oil Company, because the Pomoc Oil Company was owned by George Marcell and Mrs. Marcell at the time. To the best of my recollection the note was executed and signed by the Pomoc Oil Company. I am quite positive of that. The last time I saw that note was when I gave it to the attorney. Mr. Burke Mathes was my attorney at that time. The note was signed by R. J. Sullivan and George Marcell for the Pomoc Oil Company.

(Whereupon counsel for claimant submitted to counsel for the trustee and the Referee a copy of the complaint and summons in the state court on which the judgment in this proceeding was granted, which judgment was the consideration for the claim).

"THE REFEREE: Just a minute; let's see how the complaint is framed.

MR. MOSS: Here is a copy, Pomoc Oil Company by George Marcell, by Robert J. Sullivan, Secretary-Treasurer. Here is another copy of a note; they are both signed the same way.

(Testimony of George Marcell)

THE REFEREE: Are you satisfied now as to the form of the note?

MR. GOGGIN: Yes, your Honor.

THE REFEREE: It seems to me that first of all you should make up your mind as to this, whether or not the Trustee in Bankruptcy in this case, has the duty of presenting objections to this claim on the ground the claimant was a joint adventurer with the bankrupt corporation."

The arrangement I had with Mr. Marcell with respect to the interest I was to get in the Pomoc well was just as it is written in that letter. In other words, I was to get one-half of his net, of his net profit. I was not to get any royalty proceeds. We did not discuss that matter, just as the letter states.

GEORGE MARCELL,

called as a witness on behalf of the trustee, testified on

DIRECT EXAMINATION

as follows:

I was president of the Pomoc Oil Company on or about August 5, 1936. I had a transaction with Dr. John A. Sasso with respect to obtaining some money from him. I think the sum was \$2500.00. There was a note executed by me personally for the sum of \$2500.00. I secured \$2500 at the time I executed the personal note. The note was executed by the Pomoc Oil Company to Dr. Sasso at a later date, I don't remember the date. At the time I borrowed this \$2500, from Dr. Sasso, I had entered into an agreement with him which is evidenced by this letter of August 5, 1936. The letter reads, in paragraph two: "As per our conversation, the Pomoc Oil Company is about to

(Testimony of George Marcell)

develop this property”—which refers to the description of the property in the first paragraph of this letter—“And I offer you one-half ($1/2$) of my net profits in either the development or the sale of said lease, for the consideration of your advancing the preliminary, or so-called front money to put the company in a position to qualify its lease. In other words, to spud in the well before August 21st.” Now, the next paragraph, “The amount of money necessary to do this, would be approximately Twenty-five Hundred (\$2500.00) Dollars. However, it may run a little higher, and if it does, I will expect you to advance a small additional sum”. There was other money in addition to the \$2500 advanced by Dr. Sasso, a total of \$3000. There was an additional \$500. The next paragraph of the letter states; “The company will finance the development of this property in the best possible manner, and I know the proposition will be very profitable.” The next paragraph of the letter states: “It is necessary for me to start rigging up at once, and ask that you accept this letter immediately if the transaction is satisfactory to you. I will give you a 90 day note of the Pomoc Oil Company, due in 90 days, this note endorsed by both Mrs. Marcell and myself, in exchange for your check for Twenty-five Hundred (\$2500.00) Dollars”. That transaction was completed between myself and Dr. Sasso. My interest in the Pomoc Oil Company at the date of this letter, August 5, 1936, would be a part of the equity that was left or might be left after the company sold certain percents. On August 5, 1936, myself and my wife owned the stock of the Pomoc Oil Company, just the two of us owned it. In this conversation I had with Dr. Sasso with regard to this understanding, the interest Dr. Sasso was to receive of

(Testimony of George Marcell)

this one-half interest of mine was indefinite, for the reason that it could not be made in definite form until the well was finished,

“Q BY THE REFEREE: Was he to get one-half of what you would eventually have?”

A Yes.

MR. GOGGIN: I would like to introduce this into evidence, or would you like to have a copy substituted for it?

MR. MOSS: I don't care so much about that, but I do move to strike out all the testimony of this witness, on the ground that the judgment is conclusive.

THE REFEREE: Well, we are considering as to whether or not it would rank with the claims of other creditors here, or take some different form. Motion to strike denied, and exception allowed. Are you offering this letter?

MR. GOGGIN: Yes, I want to offer it in evidence.

THE REFEREE: This letter will be marked as Trustee's Exhibit No. c-1”.

BY MR. GOGGIN:

I have forgotten the date subsequent to the execution of the note by myself and Mrs. Marcell when the note was executed by the Pomoc Oil Company. I hate to hazard a guess because I don't want to make a mistake or misstatement, but we gave the doctor the note of the Pomoc Oil Company and I have forgotten the date. My notes were given on the basis of a loan to the company,

(Testimony of George Marcell)

and the company was to substitute that with its own note at a future date. I had many conversations with Dr. Sasso after the execution of the note by the Pomoc Oil Company that the company would pay as fast as it could. After the execution of these notes I had conversations with Dr. Sasso as to what our interest in the company was. We talked about what the equity might be, but nothing definite. These conversations occurred at the doctor's office. We had a number of conversations at his office. If everything had gone along all right I would have received so much and Dr. Sasso would have gotten half that was sold. At various times Dr. Sasso and I sat down and figured out what our accounts would be in this enterprise.

And on

CROSS EXAMINATION

BY MR. MOSS:

This interest that was being discussed of which Dr. Sasso was to receive one-half was my stock interest. While myself and my wife at first executed an individual note, within a short time thereafter that individual note was replaced by a corporation note of the same amount and date. I made the statement to him that if the company did not pay him I would, at some future date, pay him. But the company did give its note, and the money was deposited in the corporation's bank account. That is what started the corporation bank account. It was loaned to the company, there is no question about that. It was used on this lease, every cent of it.

COPY

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

	)	No. 29545-C;
In the Matter of	)	in bankruptcy
	)	PROOF OF DEBT
POMOC OIL COMPANY,	)	AND LETTER OF
a corporation,	)	ATTORNEY
Debtor.	)	J. A. Sasso
	)	Claimant

At Los Angeles, in the Southern District of California, on the 14th day of May, 1937, came J. A. Sasso, of Los Angeles, in the County of Los Angeles, in said district, personally known to me, and made oath and says:

The above named debtor, Pomoc Oil Company, a corporation, the person by or against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition and still is justly and truly indebted to said claimant in the sum of \$....., and the nature and consideration of said debt are as follows: Labor, services, goods, ware and merchandise sold and delivered within two years last past by the claimant, an itemized bill of which, marked Exhibit "A", is hereto annexed and referred to as a part hereof.

Judgment rendered in the Superior Court of Los Angeles County on March 8, 1937, for the sum of

\$2843.00, with interest thereon to March 19, 1937, the date of the commencement of this proceeding, at the rate of seven per cent per annum amounting to \$6.05, making a total of \$2849.05. By the filing of this claim claimant does not waive any security he may have for such judgment; that no part of said debt has been paid, no note has been received, nor judgment rendered for said indebtedness, nor for any part thereof, except as hereinabove stated; that there are no setoffs or counterclaims to the same; that the purchase price of said goods, wares and merchandise became due on the dates set out on said itemized bill; and that said claimant has not, nor has any other person by claimant's order, or to the knowledge or belief of deponent, or for claimant, had or received any manner of security whatever for said debt.

Said claimant hereby constitutes and appoints Earl E. Moss claimant's true and lawful attorney in fact to represent said claimant in said matter, with full authority to attend the meeting or meetings of creditors of the bankrupt aforesaid at a Court of Bankruptcy, wherever advertised or directed to be holden, on the date and at the hour appointed and notified by said Court in said matter, or at such other time and place as may be appointed by the Court for holding such meeting or meetings, or at which meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion for and in the name of the undersigned to vote for or against any proposal or resolution that may be then submitted under

the Acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of said bankrupt, and for the undersigned to assent to such appointment of trustee and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends, and of money due the undersigned under any composition, and for any other purpose whatsoever in the interest of the undersigned, with full power of substitution, and the undersigned does hereby revoke any and all prior powers of attorneys that may have been given by the undersigned.

John A. Sasso

Deponent.

Mail all dividends and notices to the following address:
Earl E. Moss
520 Subway Terminal Bldg.

Subscribed, sworn to and acknowledged before me this
14th day of May, 1937.

(seal)

Earl E. Moss
Notary Public in and for the County of Los Angeles,
State of California.

Exhibit "A" (attached to said claim)

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE COUNTY
OF LOS ANGELES

JOHN A. SASSO,)	
)	
Plaintiff,	)	No. 410631
vs.)	
	)	ABSTRACT OF
POMOC OIL COMPANY,	)	JUDGMENT
a corp.)	
Defendant.)	

I certify that in the above entitled action and Court on the 9th day of March, 1937, judgment was entered in Judgment Book 658, page 148, in favor of J. A. Sasso and against Pomoc Oil Company, a corporation, for \$2843.00 principal, \$.....interest, \$.....attorney's fees, and \$.....costs.

Dated this 19th day of March, 1937.

(SEAL) L. E. LAMPTON, County Clerk,
By E. E. Cohn, Deputy.

2:15 P. M.

COPY

IN THE DISTRICT COURT OF THE UNITED
 STATES SOUTHERN DISTRICT OF
 CALIFORNIA CENTRAL
 DIVISION

	)	No. 29545-C
In the Matter of)	
	)	OBJECTION TO
POMOC OIL COMPANY,	)	ALLOWANCE OF
a corporation,	)	FOLLOWING
Debtor.	)	CLAIM:
	)	JOHN A. SASSO

COMES NOW, Herbert C. Goldman, the duly elected, qualified and acting Trustee for the above entitled debtor estate, and objects to the allowance of the claims hereinafter set forth on the grounds therein stated, to-wit:

* * * * *

JOHN A. SASSO—\$2849.05: Objection to the allowance of this claim is made upon the ground that there is no sum due or owing the said claimant by the Pomoc Oil Company, the above named debtor. That the Trustee has been informed and believes, and therefore alleges that the judgment heretofore rendered in the State Court against the Pomoc Oil Company was a judgment rendered within four months of the filing of the petition in bankruptcy and was a judgment secured and issued by reason of a default. That your petitioner has been further informed and believes and therefore alleges that any money due or

owing to the said claimant is by reason of a loan made to one George Marcell, as an individual. Your petitioner has been informed that the said Marcell executed a note to the said claimant for the money so loaned. Your petitioner has further been informed that the said claimant was to receive from the said Marcell royalty percents from the well of the Pomoc Oil Company for the money so loaned.

* * * * *

WHEREFORE, your Trustee prays of this Court that the objections to the allowance of the foregoing claims be sustained on the grounds hereinabove set forth, and that the said claims be disallowed in accordance with the objections thereto.

HERBERT C. GOLDMAN

Trustee

GEORGE T. GOGGIN

Attorney for Trustee

COPY

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF
CALIFORNIA CENTRAL
DIVISION

In the Matter of	)	No. 29545-C
)	
POMOC OIL COMPANY,	)	PETITION FOR
a corporation,	)	REVIEW
Debtor.)	

Comes now John A. Sasso, and petitions for a review of the order of Hon. Benno M. Brink, Referee in Bankruptcy, dated February 2, 1938, a copy of which is hereto annexed, marked "Exhibit A" and made a part hereof, on the following grounds:

1. That said order is not sustained by the evidence.
2. That said order is against the law.
3. That the court erred in admitting evidence for the purpose of contradicting the judgment obtained in Sasso v. Pomoc Oil Company, and in not ruling that said judgment was conclusive, and binding upon the bankrupt estate.

WHEREFORE, petitioner on review prays that the court prepare its certificate on review and summary of the evidence, and that said order may be vacated and set aside.

Dated: February 8th, 1938.

JOHN A. SASSO
Petitioner for Review

EARL E. MOSS
Attorney for Petitioner.

State of California,)
 : ss.
 County of Los Angeles.)

John A. Sasso, being first duly sworn, deposes and says: that he is the petitioner in the above entitled matter; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information or belief, and as to those matters he believes it to be true.

JOHN A. SASSO

Subscribed and sworn to before me this 8 day of February, 1938.

[Seal]

EARL E. MOSS

Notary Public in and for said County and State.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF
CALIFORNIA CENTRAL
DIVISION

In the Matter of	)	No. 29545-C
	)	REFEREE'S
POMOC OIL COMPANY,	)	ORDER ON
a corporation,	)	OBJECTION TO
Debtor.	)	CLAIM OF
_____	)	JOHN A. SASSO

The Trustee herein, Herbert C. Goldman, heretofore and on the 8th day of December, 1937, objected to the allowance of the claim of John A. Sasso filed herein in the sum of \$2849.05. Said matter came regularly on for hearing before this Court on the 21st day of December, 1937, at the hour of 10 o'clock A. M. thereof, at which time evidence was introduced, both oral and documentary, and the matter continued from time to time thereafter and the matter was finally concluded on the 20th day of January, 1938, at the hour of 2 o'clock P. M. thereof. The Trustee appeared in person and by counsel, George T. Goggin, Esq., and the claimant appeared in person and by counsel, Earl E. Moss, Esq., and the matter was argued and submitted.

THE COURT FINDS that said claimant entered into an agreement wherein and whereby the said claimant was

to receive an interest in the above entitled debtor estate and that the said claimant is a co-adventurer and joint adventurer with the above named debtor in the development of the well of the above named debtor.

IT IS THEREFORE ORDERED that the claim of the said claimant be, and the same is hereby, subordinated and junior in right to the rights and claims of general creditors whose claims have been allowed herein.

IT IS FURTHER ORDERED that in the event there is any surplus in the estate herein after the costs of administration have been paid and the claims of general and prior creditors have been paid in full, this claim may be again considered to determine in what amount and to what extent the said claim may be allowed.

DATED this 2d day of February, 1938.

BENNO M. BRINK
Referee in Bankruptcy

COPY

IN THE DISTRICT COURT OF THE UNITED
 STATES SOUTHERN DISTRICT OF
 CALIFORNIA CENTRAL
 DIVISION

	)	No. 29545-C
)	
In the Matter of	)	REFEREE'S
	)	CERTIFICATE ON
POMOC OIL COMPANY,	)	PETITION FOR
	)	REVIEW ON THE
Debtor	)	OBJECTIONS TO
	)	THE CLAIM OF
	)	JOHN A. SASSO

TO THE HONORABLE GEORGE COSGRAVE,
 JUDGE OF THE ABOVE ENTITLED COURT:

I, Benno M. Brink, Referee in Bankruptcy before whom the above entitled proceeding is pending, do hereby certify to the following:

John A. Sasso, one of the claimants in the above entitled proceeding, has filed his Petition for Review from an order made by your Referee subordinating the claim of the said John A. Sasso to the claims of the general creditors in this case.

SUMMARY OF THE PROCEEDINGS AND OF
THE EVIDENCE AND CONCLUSIONS AND
ORDER OF THE REFEREE

Some time prior to the commencement of this proceeding the debtor, the Pomoc Oil Company, attempted the development of a certain oil property in Kern County, California. It had very little, if any, resources and its capital stock was entirely owned by one, George Marcell and his wife.

In order to raise money for the aforesaid development the debtor sold a number of participating royalty interests in the proceeds to be derived from the oil which it expected to produce and it also negotiated loans from several individuals of whom the claimant here on review is one.

In developing the said property the debtor incurred obligations which have not been paid. On March 9, 1937, this proceeding was commenced by the filing of a creditors' petition for a reorganization. On July 19, 1937, an order of liquidation was made and the matter was referred to your Referee for administration.

The claim of the petitioner on review is in the sum of \$2,849.05 and is based on a judgment recovered by the claimant against the debtor on March 9, 1937, in the Superior Court of Los Angeles County. This judgment was secured upon money loaned by the claimant to the debtor at the request of the aforesaid George Marcell, one of the two stockholders in the debtor corporation. There

is in evidence as Trustee's Exhibit C-1 a letter which the said George Marcell wrote the claimant on August 5, 1936. In this letter Mr. Marcell, among other things, said:

"As per our conversation, the Pomoc Oil Company is about to develop this property, and I offer you one-half ($\frac{1}{2}$) of my net profits in either the development or the sale of said lease, for the consideration of your advancing the preliminary, or so-called front money to put the company in a position to qualify its lease. In other words, to spud in the well before August 21st."

It was upon this letter that the claimant on review loaned the money upon which he secured the judgment upon which his claim in this case is based.

Your Referee came to the conclusion that the claimant on review was a joint adventurer with the debtor corporation and that consequently his claim should be subordinated to the claims of the general creditors. An order was, therefore, made to that effect and it is this order which is attacked upon this review.

THE QUESTION PRESENTED

The question presented by this review is this: Was the claimant on review a joint adventurer with the debtor corporation?

(Note: In order to prepare this certificate it was necessary for your Referee to have a transcript of the evidence relating to the claim of the petitioner on review. This transcript was furnished by the petitioner on review at a cost to him of \$7.50.

PAPERS SUBMITTED

I hand up for the information of the court the following papers:

1. Objection to the allowance of the claims of John A. Sasso and others, filed December 10, 1937.
2. Referee's order on objection to claim of John A. Sasso.
3. Petition for review.
4. Trustee's Exhibit C-1—letter dated August 5, 1936.
5. Transcript of testimony on hearing Trustee's objections to claim of Dr. John A. Sasso, December 21 and January 4, 1938.

Respectfully submitted this 1st day of April, 1938.

Benno M. Brink
Referee in Bankruptcy

COPY

Pacific Gulf Oil Company
437 South Hill Street
Telephone—Michigan 8273
Los Angeles, Cal.

August 5, 1936

Dr. John A. Sasso,
542 South Broadway,
Los Angeles, Cal.

Dear Sir:

The Pomoc Oil Company owns a lease of 140 acres in Section 15, Township 32 South, Range 23 East, Kern County, more particularly described as follows:

The S 1/2 of the N. E. 1/4 of Section 15, Township 32 South, Range 23 E., M. D. B. & M., in the County of Kern, State of California, except a certain five (5) acre parcel of land surrounding oil well heretofore drilled by Interstate Oil Corporation known as Perris Well No. 6-A, located near the Northerly boundary line of said S 1/2 of N. E. 1/4 of said section 15, said 5-acre excepted parcel being described as follows, viz: a parcel of land 466 feet square upon which said Perris Well No. 6-A is located, the northerly boundary line of said excepted parcel being also the northerly boundary line of said S. 1/2 of N. E. 1/4 of said section 15, and the east boundary line and the west boundary line, respectively, being 233 feet distant from a line projected south at right angles from the north boundary line of section 15 through said Well No. 6-A.

As per our conversation, the Pomoc Oil Company is about to develop this property, and I offer you one-half ($\frac{1}{2}$) of my net profits in either the development or the sale of said lease, for the consideration of your advancing the preliminary, or so-called front money to put the company in a position to qualify its lease. In other words, to spud in the well before August 21st.

The amount of money necessary to do this, would be approximately Twenty-five Hundred (\$2500.00) Dollars. However, it may run a little higher, and if it does, I will expect you to advance a small additional sum.

The company will finance the development of this property in the best possible manner, and I know the proposition will be very profitable to both of us.

It is necessary for me to start rigging up at once, and ask that you accept this letter immediately if the transaction is satisfactory to you. I will give you a 90 day note of the Pomoc Oil Company, due in 90 days, this note endorsed by both Mrs. Marcell and myself, in exchange for your check for Twenty-five Hundred (\$2500.00) Dollars.

Yours very truly,

(signed) George Marcell

COPY

Saturday, May 14, 1938

Present: The Honorable Geo. Cosgrave, District Judge
Claude J. Harris and Greenlief C. Welch, Bailiffs.

In the Matter of)	
)	
POMOC OIL COMPANY,	)	No. 29545-C Bkcy
a corporation,)	
)	
Debtor.)	

This matter having come before the Court on May 2, 1938, for hearing on petition for review filed by John A. Sasso, pursuant to notice of hearing upon petition for review of John A. Sasso filed April 29, 1938, and having been submitted on authorities to be filed simultaneously by the end of the week, and points and authorities having been filed and duly considered by the Court, the

Court now orders that the petition for review is hereby denied, and the findings and orders of the Referee are hereby confirmed, with exception to the petitioner.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF
CALIFORNIA CENTRAL
DIVISION

In the Matter of)	
)	
POMOC OIL COMPANY,)	
)	
Debtor.)	
_____)	
)	
J. A. SASSO,	)	STIPULATION
Appellant,)	
v.)	
)	
HERBERT C. GOLDMAN, as)	
Trustee in Bankruptcy of Pomoc)	
Oil Company, a corporation,)	
Debtor,)	
Appellee.)	

IT IS HEREBY STIPULATED by and between appellant and appellee, through the undersigned, their respective counsel, that the foregoing statement on appeal, together with the exhibits and copies of orders and other documents, thereto attached, is hereby approved as being a full, true, complete and properly prepared statement on

appeal, and that the same may be approved by the Court as such.

Dated: June 14, 1938.

Earl E. Moss
Attorney for appellant
GEORGE T. GOGGIN,
By George T. Goggin
Attorneys for appellee

The foregoing statement on appeal is hereby approved as being a full, true, complete and properly prepared statement on appeal.

Dated: June 15, 1938.

Geo. Cosgrave
United States District Judge

[Endorsed]: Filed R. S. Zimmerman, Clerk at 15 min. past one o'clock Jun. 15, 1938 P. M. By M. J. Sommer, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF
CALIFORNIA CENTRAL
DIVISION

In the Matter of	)	No. 29545-C
	)	PETITION FOR
POMOC OIL COMPANY,	)	ALLOWANCE
	)	OF APPEAL AND
Bankrupt.	)	FIXING BOND

To the Honorable Judges of the United States District Court, for the Southern District of California:

Your petitioner, J. A. Sasso, conceiving himself aggrieved by that certain order entered on the 16th day of May, 1938, in the above entitled proceeding, denying his petition for a review of an order of the Referee in Bankruptcy, and confirming the findings and order of the Referee, prays that an appeal may be allowed from said order to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, in order that the errors may be corrected, and petitioner further prays that a citation be issued, as by law provided, commanding appellant and respondents to appear before said Circuit Court of Appeals, and that an order be made fixing the amount of the bond which petitioner shall give and furnish upon said appeal, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Circuit Court of Appeals.

Dated this 14 day of June, 1938.

Earl E. Moss

Attorney for Petitioner and Appellant

[Endorsed]: Filed R. S. Zimmerman, Clerk at 35 min. past 12 o'clock Jun. 14, 1938 P. M. By M. J. Sommer, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

ASSIGNMENT OF ERRORS

Now comes J. A. Sasso, petitioner, and files the following assignment of errors on appeal from the order of this Court dated May 16, 1938:

First; That the Referee in Bankruptcy erred in admitting evidence for the purpose of contradicting the judgment obtained by petitioner against the debtor, and the District Court erred in confirming the Referee's findings and order based upon such evidence.

Second: That the Referee in Bankruptcy erred in refusing to make an order that the judgment obtained by petitioner against the said debtor was conclusive and binding upon its estate and the trustee in bankruptcy, and the District Court erred in confirming the findings and order of said Referee based upon such ruling.

Third: That the Referee in Bankruptcy erred in finding that petitioner entered into an agreement whereby he was to receive an interest in the debtor's estate, and the District Court erred in confirming such finding.

Fourth: That the Referee in Bankruptcy erred in finding that petitioner was a co-adventurer and joint adventurer with the debtor in the development of the well of the debtor, and the District Court erred in confirming such finding.

Fifth: That the Referee in Bankruptcy erred in ordering that the claim of petitioner be subordinated and junior

in right to the rights and claims of general creditors, and the District Court erred in confirming such order.

Sixth: That in the absence of evidence that petitioner and claimant was engaged in joint participation in the conduct of the business of the debtor, and in the absence of a finding to such effect, the Referee in Bankruptcy erred in ordering that petitioner and claimant was a co-adventurer and joint adventurer with the debtor, and that his claim be subordinated and junior in right to the rights and claims of general creditors, and the District Court erred in confirming such finding and order.

Seventh: That the said order of the Referee in Bankruptcy is not sustained by the evidence, and the District Court erred in confirming it.

Eighth: That said order of the Referee in Bankruptcy is against the law, and the District Court erred in confirming it.

WHEREFORE petitioner prays that said order may be reversed and his claim allowed as a general claim, and for such other relief as to the Court may seem just and proper.

Dated: June 14, 1938.

Earl E. Moss

Attorney for Petitioner and Appellant

[Endorsed]: Filed R. S. Zimmerman, Clerk at 35 min. past 12 o'clock Jun. 14, 1938 P. M. By M. J. Sommer, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

ORDER ALLOWING APPEAL AND FIXING
AMOUNT OF COST BOND

Upon reading and filing the assignment of errors alleged by J. A. Sasso, petitioner and appellant, and upon reading and filing the petition of said J. A. Sasso for the allowance of an appeal and for an order fixing the amount of the cost bond on appeal, and good cause appearing therefor,

IT IS ORDERED, that an appeal by J. A. Sasso be, and the same is hereby allowed, for the purpose of having and to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the order denying a review of the order of Hon. Benno M. Brink, Referee in Bankruptcy, subordinating the claim of J. A. Sasso to the claims of other creditors, and confirming said findings and order of said Referee theretofore made and entered on the 2nd day of February, 1938, and that a duly authenticated transcript of the record of all proceedings and all evidence be transmitted forthwith to said Circuit Court for such purpose.

IT IS FURTHER ORDERED that said J. A. Sasso shall file with the clerk of this Court a good and sufficient bond to be approved by this Court in the sum of \$300.00, conditioned that if said J. A. Sasso shall prosecute his appeal to effect and shall answer all damages for costs in the event he fails to make good his appeal, then the obligation of said bond shall be void, otherwise to remain in full force and effect.

Dated: June 14, 1938.

Geo. Cosgrave
Judge

[Endorsed]: Filed R. S. Zimmerman, Clerk at 36 min. past 12 o'clock, Jun. 14 1938 P. M. By M. J. Sommer, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS: That we, J. A. Sasso, as principal, and Maurice Sasso and R. M. Bailey, as sureties, are held and firmly bound unto the trustee of the estate of the above named debtor in the sum of Three Hundred Dollars, for the payment of which well and truly to be made we bind ourselves, our administrators, successors and assigns, jointly and severally, firmly by these presents. Sealed with our seals and dated this 14 day of June, 1938.

WHEREAS an order was entered in the above entitled proceeding in the District Court of the United States, for the Southern District of California, Central Division, on the 14 day of June, 1938, allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from a certain order by said United States District Court made on the 16th day of May, 1938, wherein J. A. Sasso was the petitioner for review, and Herbert C. Goldman, as trustee of the estate of Pomoc Oil Company, debtor, was respondent.

WHEREAS in said order allowing said appeal it was required that appellant give a bond on appeal in the sum of Three Hundred Dollars.

NOW, THEREFORE, the condition of this obligation is such that if the above named appellant shall prosecute his appeal to effect and answer all damages and costs if he fails to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

John A. Sasso
Maurice Sasso, C. E.
R. M. Bailey

[TITLE OF DISTRICT COURT AND CAUSE.]

PRAECIPE

To R. S. Zimmerman, Clerk of the United States District Court, in and for the Southern District of California, Central Division:

You will please prepare and transmit to the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, duly authenticated copies of the following documents:

1. Statement on appeal, including copies of all exhibits, orders and other documents thereto attached;
2. Petition for appeal;
3. Assignment of errors;
4. Order allowing appeal and fixing amount of bond;
5. Bond on appeal;
6. Citation on appeal;
7. Praecipe for transcript of record;
8. Clerk's certificate.

Dated this 14th day of June, 1938.

Earl E. Moss

Attorney for appellant.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 6 min. past 9 o'clock, Jun. 15, 1938 A. M. By M. J. Sommer, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

PRAECIPE

TO THE CLERK OF SAID COURT:

Sir:

Please print 40 copies of transcript on appeal.

Earl E. Moss

Attorney for Appellant.

[Endorsed]: Filed Jun 25 1938 10 a. m. R. S. Zimmerman, Clerk, By Edmund L. Smith, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 36 pages, numbered from 1 to 36 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; statement on appeal; petition for appeal; assignment of errors; order allowing appeal; bond on appeal and praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to..... and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of July, in the year of Our Lord One Thousand Nine Hundred and Thirty-eight and of Our Independence the One Hundred and Sixty-third.

R. S. ZIMMERMAN,
Clerk of the District Court of the
United States of America, in
and for the Southern District
of California.

By

Deputy.

